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HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GABRIEL ORTIZ, ANDREW GONZALES,
LANDON MICKEY MILLER, AND JOE
HUYNH, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

HOME DEPOT U.S.A., INC.,

Defendant.

Case No. C 09-03485 LHK

**NOTICE OF SETTLEMENT; JOINT
REQUEST TO STAY CASE
MANAGEMENT SCHEDULE;
DECLARATION IN SUPPORT;
~~PROPOSED~~ ORDER**

[Fed. R. Civ. P. 26(f), Civ. L.R. 6-1(b), 6-2,
7-12.]

The Honorable Lucy H. Koh

1 After two mediation sessions before the Honorable Edward A. Infante (ret.), and significant
2 efforts and negotiations following those sessions, the parties have reached an agreement on material
3 terms, including provisions for class-wide equitable relief, monetary relief to the putative class
4 members and named plaintiffs, and reasonable attorneys' fees and costs, subject to reaching a final
5 agreement on all language of a class action settlement agreement.

6 The parties are drafting a formal class action settlement agreement and motion papers to
7 present to the Court in connection with a motion for preliminary approval of the proposed agreement.
8 The parties submit that it is in the interest of justice and judicial economy to now devote their
9 resources entirely to the settlement drafting process and preliminary approval motion, rather than to
10 divert them to the final depositions and plaintiffs' motion for class certification, otherwise due July 14,
11 2011. Accordingly, the parties respectfully request that the Court stay the current pretrial schedule
12 until August 31, 2011. Plaintiffs intend to file the motion for preliminary approval on or before August
13 31, 2011.

14 On January 26, 2011, the Court issued a scheduling order modifying the pretrial schedule
15 originally set by the Honorable James Ware in his order of February 25, 2010. Since the January 26,
16 2011 Order, the parties sought two other modifications of the pretrial schedule: (1) the parties
17 stipulated to extend the date for taking a Rule 30(b)(6) deposition for approximately one month; and
18 (2) the parties stipulated to extend the date for expert disclosures pertaining to class certification.

19 A declaration from plaintiffs' counsel Joshua Konecky in support of this request is enclosed.
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1 Dated: July 7, 2011

THE LEGAL AID SOCIETY-EMPLOYMENT
LAW CENTER

2
3 SCHNEIDER WALLACE
COTTRELL BRAYTON
KONECKY LLP

4
5 /s/ Joshua Konecky

JOSHUA KONECKY

6 Attorneys for Plaintiffs
7 Gabriel Ortiz, Andrew Gonzales, Landon Mickey
Miller, and Joe Huynh

8
9 Dated: July 7, 2011.

AKIN GUMP STRAUSS HAUER & FELD LLP

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11
12 /s/ Bill Allen

BILL ALLEN

13 Attorneys for Defendant
14 HOME DEPOT U.S.A., INC.

15 **ECF CERTIFICATION**

16 Pursuant to General Order No. 45 X. (B), I attest that concurrence in the filing of this
17 document has been obtained from Defendant's counsel.

18
19 Dated: July 7, 2011.

20 /s/ Joshua Konecky

JOSHUA KONECKY

DECLARATION OF JOSHUA KONECKY

I, Joshua Konecky, declare,

1. I am an attorney in good standing licensed to practice in the Northern District of California and am attorney of record in *Ortiz v. Home Depot U.S.A., Inc.*, Case No. C 09-03485 LHK (N.D. Cal.). I make this declaration based on my own personal knowledge and, if called to do so, could and would competently so testify in court.

2. The parties have appeared for two full-day mediation sessions before the Honorable Edward A. Infante (ret.). Through these sessions and subsequent negotiations, the parties reached an agreement on material terms for the equitable relief provisions of a comprehensive class action settlement as well as the amount of monetary relief to the putative class members. Through further arms-length negotiations conducted after the mediation sessions, the parties reached an agreement on monetary provisions for the named plaintiffs and amounts for the payment of attorneys' fees and costs. These agreements are subject to reaching a final agreement on all language of a class action settlement agreement.

3. The parties memorialized the material terms of their agreement on July 1, 2011.

4. The parties are now drafting the formal settlement agreement and papers in support of the motion for preliminary approval of the proposed class action settlement. The parties submit that it is in the interest of justice and judicial economy to now devote their resources entirely to the settlement drafting process and preliminary approval motion, rather than to divert them to the final depositions and motion for class certification, otherwise due July 14, 2011. Accordingly, the parties respectfully request that the Court stay the current pretrial schedule until August 31, 2011. Plaintiffs intend to file the motion for preliminary approval on or before August 31, 2011.

5. In addition to the Case Management Order entered on January 26, 2011 (*see* dkt. No. 50), the following time modifications have been made by the Court, upon motion or by stipulation: (1) plaintiffs' motion for continuance of Case Management Conference (*see* dkt. no. 10); (2) stipulation to extension of time for Defendant to file answer to amended complaint (*see* dkt. no. 13); (3) stipulation to extend time for mediation (*see* dkt. no. 36); (4) stipulation to extend time for taking Rule 30(b)(6)

6. Defendant's counsel Bill Allen has authorized Plaintiffs' counsel to sign the joint motion on his behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 7th day of July, 2011, in Oneonta, NY.

/s/
Joshua Konecky

1
2 The parties stipulate that they have reached an agreement on material terms of a proposed class
3 action settlement agreement to present to the Court for preliminary approval. The parties further
4 stipulate that it would be in the interest of justice and economy to stay the current pretrial schedule and
5 devote resources to the settlement drafting process and preliminary approval motion.

6 PURSUANT TO THE PARTIES' NOTICE OF SETTLEMENT AND STIPULATION, AND
7 GOOD CAUSE SHOWN, IT IS SO ORDERED THAT:

8 The current pretrial schedule is STAYED until August 31, 2011. Plaintiffs shall file the motion
9 for preliminary approval on or before August 31, 2011. In the event that the parties do not finalize the
10 settlement and file the preliminary approval motion by August 31, 2011, the parties should be prepared
11 to file their class certification briefing on an expedited basis.

12 **IT IS SO ORDERED.**

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14 Dated: July 7, 2011



THE HON. LUCY H. KOH
United States District Judge